

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**  
1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 68907**

Petitioner:

**BRIAN MALTBY,**

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF  
COMMISSIONERS.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on November 1, 2016, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner appeared *pro se*. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2014.

Subject property is described as follows:

**Vacant Land located west of South Kiowa-Bennett Road and south of  
East Caley Place  
Unincorporated Arapahoe County, Colorado  
Arapahoe County Parcel No. 2067-00-0-00-263**

The subject property consists of a 78.49-acre parcel. The property had previously been classified as agricultural use for tax purposes. However, the land had not been actively farmed for several years causing the property to be reclassified as vacant land. Mr. Maltby testified that for the three years prior to 2014 the site was left "fallow" with no crop and no chemicals applied, allowing the subject to qualify for organic certification. The property was again planted in 2013, 2014 and 2015, when Arapahoe County recognized farming use and reclassified the land back to agricultural.

Petitioner is requesting agricultural classification and a 2014 actual value of \$140,000 for the subject property. Respondent assigned a vacant land classification with an actual value of \$160,857 to the subject property for tax year 2014, but is recommending a reduction in value to \$140,000 with classification remaining as a vacant land.

The sole issue before the Board is the classification of the subject for tax year 2014.

Section 39-1-102(1.6)(a)(I), C.R.S. defines agricultural land as a parcel of land “that was used the previous two years and presently is used as a farm or ranch [ . . . ] or that is in the process of being restored through conservation practices.” In the case of the subject, classification as agricultural use is dependent on the actual use of the property in 2012, 2013 and 2014.

Mr. Maltby testified that he had purchased the property in 2003 with the intent to build a home on the property and commence some form of a farming operation. Respondent’s Exhibit A indicates that the property was transferred between Mr. Maltby and several other parties over the years, until Mr. Maltby became the sole owner on January 5, 2013. Although attempts had been made by Petitioner to produce an agricultural crop on the site, there was no evidence of a crop on the property provided to the Board. There was no evidence presented by Petitioner to show that the property was being restored through conservation practice.

Respondent’s witness, Ms. Karen Hart, Land Supervisor with the Arapahoe County Assessor’s Office, testified that she had personally inspected the property many times while passing it by on her way to work. Ms. Hart testified that she started observing the property in 2011 and that there was no crop planted or harvested from the site until 2013. This testimony was well supported by photographs from 2006 through 2014, along with the 2012 Agricultural Land Questionnaire which reflected “0” acres harvested on the subject. Further, Respondent’s witness contended that the land does not need to be left “fallow” to receive organic certification, and that most properties that seek organic certification continue to provide some form of crop (hay . etc.) or are used for grazing during the restoration period.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2014 classification of the subject property was incorrect. The Board accepts Respondent’s recommendation to reduce the 2014 value to \$140,000.

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2014 actual value for the subject property of \$140,000, with no change in classification.

The Arapahoe County Assessor is directed to change his/her records accordingly.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

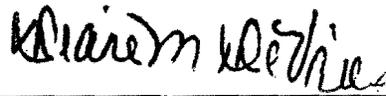
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 10th day of November, 2016.

**BOARD OF ASSESSMENT APPEALS**



Diane M. DeVries



Sondra W. Mercier

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

  
Milla Lishchuk